Interview Summary: Michael Hatch, Canadian Credit Union Association

Background

Michael Hatch is Vice-President of government relations for the Canadian Credit Union Association (**CCUA**), a national trade association representing credit unions (**CUs**) in all Canadian provinces, except Québec. Brenda M. O'Connor, Vice President, Governance & Strategy of the CCUA was also present at the interview.

After the issuance of the *Emergency Economic Measures Order* (**EEMO**), Mr. Hatch was involved in seeking clarifications on the EEMO's scope of application and in lobbying efforts on behalf of CCUA's members. Ms. O'Connor was in charge of the legal and compliance aspects of the EEMO.

Mr. Hatch was interviewed by Daniel Sheppard and Guillaume Sirois on August 24, 2022. Questions about this summary should be directed to Daniel Sheppard.

Text contained in [square brackets] are explanatory notes provided by Commission Counsel to assist the reader.

The CCUA and Learning of the EEMO

Mr. Hatch is part of CCUA's executive leadership team and reports directly to the CEO. He is responsible for CCUA's advocacy and lobbying efforts on behalf of more than 200 CUs across Canada. Most CUs are provincially regulated institutions and as such, most of Mr. Hatch's work is directed towards provincial governments. However, at least one third of his work is directed towards the federal government on matters relevant to CUs.

Mr. Hatch learned of the EEMO during a February 14, 2022, press conference, at the same time as the general public. The CCUA was not consulted prior to the issuance of the EEMO. Mr Hatch noted that the federal government contacted the major banks and provided them with critical information days before the CU sector was engaged.

Early Communications with the Federal Government

The CCUA was initially unsure whether the EEMO applied to its provincially regulated CUs. On February 14, 2022, Mr. Hatch phoned Douglas Wong, CCUA's point of contact within the Minister of Finance's office, to inquire whether the EEMO applied to provincially regulated CUs. Mr. Wong confirmed that it did.

Following the release of the text of the EEMO, there was still confusion respecting the scope of the order's application. In Mr. Hatch's view, the EEMO could be interpreted as imposing on financial institutions a duty to cease dealings with every individual that showed even the smallest degree of financial support to the Freedom Convoy movement. Mr. Hatch explained that applying the EEMO in this way would be almost administratively

impossible for CUs. Mr. Wong, in a subsequent call with Mr. Hatch around February 15, 2022, confirmed that the EEMO was intended to have a more targeted application.

Mr. Hatch explained that, in the first few days after the issuance of the EEMO, the lack of clarity with respect to its scope of application created concerns among member customers of some CUs. Mr. Hatch was receiving reports of significant cash withdrawals from CU customers worried that their account would be frozen.

Throughout the public order emergency, the CCUA sent communications to its members in order to provide them with information about the EEMO. On February 15, 2022, CCUA sent an email to its members conveying the information that Mr. Hatch understood from his phone calls with Mr. Wong, namely, that the Finance Minister's Office had advised that the intent of the EEMO was not to freeze accounts "as a result of support for or association with protest participants". After Mr. Hatch forwarded a copy of this message to Mr. Wong, Mr. Wong responded to Mr. Hatch to say that that statement was not accurate.[1] Mr. Hatch did not follow up with Mr. Wong to clarify that issue.

Mr. Hatch believes that the information he provided to CCUA's members was in accordance with the information he was receiving from the Department of Finance and that there was no ambiguity in the Department's position that the EEMO application would not apply to all protest supporters or associates, but would be highly targeted. The CCUA's intention was not to muddy the waters, but to provide some certainty in a high-pressure environment.

On February 17, 2022, Julien Brazeau [then the Director General of the Financial Crimes and Security Division, Financial Sector Policy Branch, Department of Finance] sent an email to Mr. Hatch asking him whether CCUA's members would be interested in a meeting with the Department of Finance to answer their questions regarding the EEMO. The meeting took place on February 18, 2022, on MS Teams. The meeting was at full capacity with 600 participants who asked questions on a range of topics including:

- How to determine if an individual is a *designated person* under the EEMO, and if a list of *designated persons* will be provided;
- The legal obligations with respect to the application of the EEMO, such as whether financial institutions have to report individuals to law enforcement in addition to freezing their account; and
- The potential liability of freezing the wrong account.

In Mr. Hatch's view, the call was very helpful in calming some anxieties and in providing more clarity on the EEMO application. For instance, government officials were clear that the purpose of the EEMO is not to freeze the account of individuals that provided very

[1] Exchange of emails between Michael Hatch and Douglas Wong, February 15, 2022, **CCU00000228**.

small donations to the Freedom Convoy movement. However, there was still some lack of clarity with respect to the scope of application of the EEMO. There were also many members of the CCUA who were unable to access the meeting due to the large number of attendees logging in.

Concerns Respecting the Scope of the EEMO

According to Mr. Hatch, there was never a clear-cut answer as to who was a *designated person* under the EEMO and that the government erred in giving discretion to financial institutions to decide what accounts to freeze. For instance, Department of Finance officials clarified during the February 18, 2022, call that very small donations were not targeted by the EEMO, but the exact threshold was never established. The EEMO text was broader than the information they were receiving from Department of Finance about the intended scope of the order; the EEMO itself does not discriminate based on the materiality of the donations or degree of assistance to the Freedom Convoy movement. The lack of a clear threshold therefore made it difficult for CUs to know who should be viewed as a *designated person*.

Mr. Hatch stressed that no financial institution wants the discretionary power to freeze their clients' or members' account. He added that CUs would have been more comfortable with a clear list of *designated persons*. However, the CCUA did not attempt to have the government adopt this approach, because this was not seen as a possibility at the time.

Connecting with Law Enforcement

On February 16, 2022, the CCUA learned through the media that the RCMP was providing a list of *designated persons* to banks. Although not requested, the RCMP subsequently emailed a list of designated persons to CCUA asking CCUA to distribute to their member CUs.

Mr. Hatch explained that once CCUA received the list, they were concerned about sending the list to its member CUs since CCUA is not itself a financial institution and therefore not protected under the "immunity" provision of the EEMO. To solve that concern, CCUA published the list on the Credit Union Office of Crime Prevention and Investigation, which is a secure site managed by CCUA to which CU security officers can voluntarily adhere to confidentiality requirements and access law enforcement information with respect to sanctioned individuals.

Mr. Hatch explained that if a CU member's name was on the list, that meant that the RCMP considered such persons to be *designated persons*; however, the RCMP made it clear that its lists were not exhaustive and that CUs retained the responsibility to freeze the account of any individual suspected of supporting the Freedom Convoy movement. As a practical matter, CUs treated the lists obtained from the RCMP as setting out the individuals that constituted *designated persons*.

Determining whether an individual not included on the RCMP lists supported the Freedom Convoy movement was very challenging for CU employees and such a determination could have dramatic consequences for the individual whose account is frozen. The financial sector, and especially the CU sector, is based on trust, and freezing an account without clear legislative authority and direction is considered to be an irreconcilable breach of trust. Mr. Hatch stressed that freezing an account is a "nuclear option" that no one wants to use.

According to Ms. O'Connor, the key difference between the obligations imposed under the EEMO and those imposed by the United Nations sanction list is that the EEMO does not provide for an exhaustive list of individuals. Ms. O'Connor added that the majority of CUs had the tools to do what was required under the EEMO, such as identifying sanctioned individuals dealing with the CU, but that smaller CUs may have struggled with meeting their duty to determine whether particular members constituted *designated persons*.

Freezing and Reporting

The Department of Finance provided a reporting template to the CCUA so that CUs could report their account freezing activities.[2] Mr. Hatch mentioned to the Department that this template would not be used by CUs, because they would not have time to complete it. The CCUA instead sent out two surveys to all of its members with respect to the EEMO application. The survey had a relatively high response rate. According to responses, only about 10 accounts were frozen.

Unfreezing

On February 21, 2022, CCUA received an email from the RCMP telling them that the individuals on the list they provided were not considered *designated persons* anymore. The RCMP added that financial institutions nevertheless still had a continuing obligation to identify individuals supporting the Freedom Convoy movement[3].

Mr. Hatch is not aware of any CU maintaining the account freezing, because every CU wanted to unfreeze the accounts as soon as possible.

Effects

According to Mr. Hatch, some CU staff were dealing with agitated, angry or threatening individuals, to the point that some CUs were concerned about the safety of their staff. As

[2] Financial Data Report- *Emergencies Act*, **CCU00000227**.

[3] Emails from RCMP, dated February 21, 2022, **CCU00000145**.

mentioned above, some CU member customers were also making significant cash withdrawals. Mr. Hatch relayed that information to Mr. Wong.

Mr. Hatch also found a surprising level of pushback by the public regarding the EEMO. He mentioned that it caused an important erosion of trust and that it was not appreciated until then that the federal government had the power to freeze bank accounts.

Recommendations

According to Mr. Hatch, CUs must be consulted and informed from the outset when a new policy regarding the financial sector is adopted. Mr. Hatch explained that CUs are important players and that they represent half of the financial market in some provinces. Mr. Hatch added that CUs are different than banks and that the government would benefit from CU specific feedback.

Mr. Hatch also mentioned that the government could have done more to reassure the public about the scope of the EEMO in the early days.